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AUG 21 1992

523 Beall Ave.
Rockville, MD 20850
August 17, 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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AUG 20 1992

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

MAIL BRANCH

Re: FCC Docket No. 92-90

ORIGINAL
FILE

Dear Madam or Sir:

On February 24, 1992, I wrote to the Federal Communications Commission at the above address presenting written testimony related to the above referenced docket. At the time, I did not have a docket number, and merely referenced proposed telemarketing regulations. I never heard from the Commission, and do not know if my correspondence was received or properly filed.

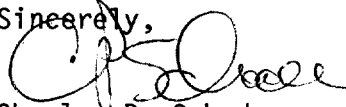
I now wish to add to the previous testimony. As an interested party, I would appreciate receiving notices of further Commission action related to the Telephone Consumer Protection Act of 1991.

I recently filed a complaint with the Informal complaints and Public Inquiries Branch related to telemarketing practices. A copy of that complaint is attached. What can be concluded from that complaint is that voluntary compliance by the telemarketing industry and the telecommunications industry does not work - at least not in my case.

I urge the commission to adopt the rules proposed by the National Consumers League that would enable a person who wished not to receive unsolicited calls to "opt out" by completing a postcard form. It would be an undue burden on consumers to require them to register with each telemarketing firm to end harassing calls. Firms obtain their referral lists from national sources; they can be required to purge their lists against national no-call listings.

Any rules adopted by the Commission should also contain a simple means for citizens to recover damages in some nominal amount from firms that call them once they are duly enrolled in the national "no call" list. This would make self-enforcement a possibility. There should also be uniform requirements for record keeping by telemarketing firms, as well as rules requiring disclosure of the telemarketer's true identity and company affiliation within 15 seconds of acceptance of a call by a consumer.

Sincerely,


Charles P. Schade



1. Invasion of privacy. NARAL gave my name, address, and telephone number to Facter Fox without my knowledge or consent. Facter Fox, in turn, provided this information to at least its employee "Andy," who used it to place harassing telephone calls. Since "Andy" remains at large, I have no idea what further invasions of my privacy or more serious criminal acts he may be contemplating, nor do I know to what other unstable characters Facter Fox may have disclosed this information. Naturally, this has caused me anxiety and mental distress.
2. Breach of confidentiality. NARAL represents a cause that is unpopular among many Americans, including the President. While I do not necessarily admit to sympathy with that cause, the release of my name to an irresponsible third party places me at risk of identification and public humiliation. People who are labeled as pro-abortion are liable to be picketed, to receive threatening telephone calls, and to be intimidated in numerous other ways.
3. Harassing telephone calls. The nature of the calls is fully outlined in the chronology. According to the Communications Act of 1934 that you provided me, it is unlawful to make a telephone call without disclosing one's identity, and with the intent to annoy, abuse, threaten, or harass any person at the called number. "Andy" lied about his identity and employer. His first call was so annoying that I hung up in anger.

Although Facter Fox may claim his intent was otherwise, the fact is that there are about a dozen other people out there who also received annoying calls from Facter Fox--so many that NARAL terminated its contract. At some point, Facter Fox should have known there was a problem. That they did nothing until I contacted NARAL indicates complicity with intent to harass. For all I know, more than one employee was involved. That NARAL did not respond to my immediate telephone inquiry and subsequent written demand also documents its complicity.

4. Failure to supervise/failure to keep adequate records. Facter Fox claims it is unable to identify the person who called me. It is possible that's true, in which case Facter Fox has failed to supervise its employees. This makes Facter Fox responsible for any illegal activity of its employees, since otherwise any company could escape blame for any illegal activity it permits merely by claiming it didn't know about it and by keeping such poor records that its knowledge could not subsequently be discovered.

The public's distaste for telephone solicitation is so well known that federal legislation has been proposed to control it, that the industry offers a way to reduce telephone solicitation calls (ineffective, but offered), and that the FCC has needed to publish a bulletin about unsolicited calls. Such distaste may well result in

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523 Beall Ave.
Rockville, MD 20850
August 8, 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Informal Complaints and Public Inquiries Branch
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Suite 6202
Washington, DC 20554

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AUG 20 1992

MAIL BRANCH

Re: 63203/ICB-FS-COMPLAINTS

Dear Madam or Sir:

Attached is a chronology that substantiates my efforts to resolve a series of complaints against the National Abortion Rights Action League (NARAL), a political activist group whose offices are at 1101 14th Street NW, Washington, DC 20005; Facter Fox & Associates, Inc. (Facter Fox), a telemarketing company located at 11255 W. Olympic Blvd., Los Angeles, CA 90064; and four telephone companies known to the Federal Communications Commission (FCC), the Chesapeake and Potomac Telephone Company (C&P), General Telephone Company (GTE), Pacific Bell Telephone Company (Pacific Bell), and the American Telephone and Telegraph Company (AT&T).

My complaints stem from two harassing telephone calls I received from an employee of Facter Fox on July 2, 1992. These calls were placed to my home with the knowledge and under the direction of Facter Fox and NARAL, who may be accountable for their threatening and annoying content due to their failure to supervise the unknown individual who placed the calls at their direction, and due to their toleration of a series of annoying calls made to others and failure to report the matter to appropriate law enforcement authorities or take remedial action to prevent further such occurrences. Furthermore, the four telephone companies are also responsible for this annoyance I had to endure because of their failure to respond promptly to complaints, refusal to investigate, and provision of misleading and contradictory information that delayed my confirmation of the source of the calls until long after the individual who made them had concealed himself.

I have diligently attempted to resolve these complaints with all the companies involved as well as with NARAL. I have responded to inquiries from Facter Fox, but not attempted to contact that company, as I have no business relationship with Facter Fox. That company has merely served as a willing partner in an invasion of my privacy and violation of my confidentiality.

I recognize that the FCC may not be equipped to handle all of the complaints enumerated below. I am relying on the FCC to make referrals to the appropriate agencies to assure that each is addressed.

Facter Fox knowing that its employees are very likely to respond to constant negative reactions from people they call by becoming abusive themselves. The right way to avert this is not to call people who wish not to be called. The Facter Fox way is to ignore how its employees act and hope it doesn't get caught.

On the other hand, it is possible that Facter Fox knows full well the identity of the person who called me, and knows the content of the call. The company's air of cooperativeness could be a cover for its destruction of records and protection of its overzealous employee. There's no way I can discover the truth in this matter, but the correct resolution is to hold Facter Fox responsible for its employee's actions.

Facter Fox may also claim that it had no knowledge that its employee had removed my name and telephone number from its premises to make a second annoying call at an hour calculated to cause distress. However, Facter Fox is also responsible for the second call, since it did not secure its business records. NARAL, of course, is responsible for both calls as well, for failing to supervise its contractor and for failing to insist that its contractor not call persons who had indicated a desire not to be called by, at a minimum, purging the list of persons to be called against the Direct Marketing Association's Telephone Preference List (if it exists), and Private Citizen, Incorporated's directory.

5. Failure to provide toll service in conformance with tariffs. AT&T's operator failed to determine whether I would accept charges prior to connecting the second harassing call. By leaving the line, she left me no way of determining where the call had originated and starting legal action at once.
6. Providing false and misleading information about how to pursue an interstate harassing caller. The chronology illustrates that AT&T, C&P, GTE, and Pacific Bell gave multiple, conflicting pieces of advice and information about how they could assist in this problem and who was the appropriate authority to contact. Only after I repeatedly pressed AT&T did that company disclose that complaints could be filed with the FCC. Since customers of telephone carriers are not expected to be knowledgeable of the law, it is the carrier's duty to see that its employees give correct and complete advice.

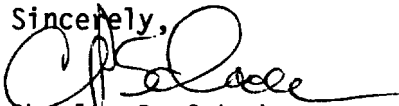
I still do not know if it is possible for AT&T to obtain billing information on long distance calls on demand, but I cannot imagine that a company whose profits depend on such records would not have them readily available. There was some reference to possible assistance if a request were made from a law enforcement agency, but by not telling me the correct agency until nearly a month had lapsed, AT&T assured that I would be unable to locate the caller.

Telephone companies earn substantial profits from telemarketers. It is therefore not in their interest to pursue vigorously complaints against them, lest their profits be reduced. I speculate that my treatment by these carriers may be a deliberate policy of deception to protect a favored client. In this case, it amounts to collusion to violate federal law.

This situation has left me defenseless against at least one person, who I hope lives in Los Angeles and who I hope remains there. I have repeatedly requested telemarketers not to call me for any reason, and have terminated or refused to begin business relationships with companies that I could identify that engage in this practice. By registering with the DMA and Private Citizen, I have taken all means known to me to stop these calls, short of preventing legitimate callers from reaching me through such means as unlisted numbers (which don't necessarily work) and telephone answering machines.

The FCC should investigate this matter thoroughly, and if it finds my account correct, should penalize each and every party in my complaint to the maximum extent of the law. In addition, the FCC should require NARAL to notify all the parties who received calls from Factor Fox and solicit reports of additional harassment. NARAL and Factor Fox should compensate the victims of their malfeasance and the results of this intervention should be published as a deterrent to others in this rogue industry.

Sincerely,



Charles P. Schade

CHRONOLOGY
Response of Telephone Company Officials and Others
to Complaint of Harassing Telephone Calls

RECEIVED

AUG 20 1991

Complainant: Charles P. Schade
523 Beall Ave.
Rockville, MD 20850
301-294-0426

MAIL BRANCH

December, 1991. After receiving numerous annoying and harassing telephone solicitation calls, I learned of the Direct Marketing Association's (DMA) Telephone Preference List, a service that purports to reduce the number of such calls received by those listed. My wife and I each registered with that service, using our full, legal names and current telephone number and street address. None of this information has changed since we registered with DMA. We also subscribed to Private Citizen, Incorporated, of Napierville, Illinois, asking to be placed on its Private Citizens Directory.

July 2, 1992, 6:30 p.m. Received call from "Andy," stated he was calling on behalf of the National Abortion Rights Action League (NARAL). He claimed to be a volunteer. Referred to me constantly as "Charles." When I attempted to tell him that I wished to be on the organization's "no phone" list, he became abusive and sarcastic. Unable to interrupt him, I angrily hung up.

July 2, 6:45 p.m. Placed call to NARAL, Washington, DC. Receptionist answered, told me that NARAL had no volunteers doing phone solicitation, but that NARAL did use a telemarketing firm. Left irate message on NARAL answering machine, demanding to know why NARAL had invaded my privacy with an unwanted call, and had additionally hired untruthful telemarketers.

July 3, 1:30 a.m. Received collect, person to person call via AT&T. Operator asked caller to identify self. Caller asked "Is Charles there?" I asked, "Who is this?" Operator connected the call without waiting verification. Caller repeated, "Is Charles there?" in "Andy's" voice. I said "Yes." Andy asked "Did I wake you?" I said, "Yes." Andy said "Good!" and hung up.

July 3, 1:30 a.m. Immediately called AT&T (my long distance carrier) customer service to complain about call and operator failure to wait for authorization to bill. Spoke to Mrs. Samuels. Said she'd report operator error, but that there was nothing to be done about the call.

July 3, 10 a.m. Wrote to NARAL's legal counsel, demanding that NARAL tell me by July 15 to whom my name and address had been given and the name and address of the person who had called me. Received no response from NARAL. By not responding, NARAL allowed the trail to grow cold, so that my chances of ever locating the caller diminished substantially.

July 3, 12:08 p.m. Called AT&T customer service again. Spoke to Dave McCormick, in Providence. Asked about obtaining the number from which the collect call had been placed. McCormick said that C&P Telephone had all the information on the call; suggested I call them.

July 3, 12:20 p.m. Called C&P (my local telephone company) operator. C&P business office closed on holiday. Inquired if local call trace feature would record number of harassing call from previous night, as no calls had been received since. Told it wouldn't since it was out of the local area. Also was told that the information on the call would be in C&P's business office within 48 hours.

Later July 3, went on vacation for a week.

July 14. Back in office from vacation. Spoke to Mrs. Leonard at C&P. She said that it used to be possible to get billing information from C&P's comptroller on toll calls not yet billed, but that now the information would have to be obtained from AT&T and would require 10 business days.

July 14. Spoke again to AT&T (Elise Mittlemeyer). She says that AT&T does not provide information on bills prior to billing, and claimed it was highly proprietary information. When I challenged that statement, she explained the handling of direct dialed long distance calls: they are recorded in the local telephone company. AT&T receives information electronically about each call and reports back rating information on it. She did not deny that AT&T had the capability of searching its records for information on calls placed over its network. I asked for AT&T's written policy on retrieving billing information prior to a billing date. She said she'd get back to me.

July 16. Ms. Mittlemeyer called back and said AT&T had no written policy.

During all this time, no C&P or AT&T employee offered me any information about how and to whom to make a complaint about this harassing phone call.

July 25. Received July 19 bill from C&P Telephone. Noted AT&T call from Los Angeles (213-669-4949) at 10:28 Pacific Time.

July 27. Called AT&T customer service. Spoke with Bobbie (female) who determined that the Los Angeles number had been disconnected. She did not disclose that it was a pay telephone. Asked her what AT&T would do about this. She said that the call would most likely be written off and that it had been removed from my bill. She also said that there would be no way I could follow up to determine what action, if any, AT&T had taken. She connected me to the Fraud Investigation Center of AT&T. Melanie told me that the \$3.15 charge would not go to the company's fraud unit as it was too small, and that I should make the harassment complaint to my local telephone company.

July 28. Called C&P, spoke to Tracy who referred me to the Annoying Calls Bureau. Spoke with Mrs. Coleman. Asked her if C&P would do anything about this harassment. I informed her that the harassing call had originated from a C&P customer's action (NARAL). She said that C&P would do nothing. I would have to have local law enforcement deal with it and suggested I report the matter to the Rockville, Maryland police. I asked her if she would send me C&P's written policy on dealing with complaints of harassing phone calls. She denied there was a policy and suggested I inspect the telephone company's tariffs at 13th and G Streets in

Washington.

July 28, 1 p.m. Went to NARAL's office at 1101 14th Street, NW (202-408-4600). Was told I couldn't see the development director since she was out of town. Asked to see a senior member of her staff. Told I couldn't, since I did not have an appointment. Said that NARAL's failure to reply to my letter meant the only way I could get an answer, and repeated my demand to see someone.

Brad Kiley, Membership Development Manager, offered to talk to me. I asked Kiley if NARAL used a telemarketing firm in Los Angeles. He said NARAL had - until recently. About a dozen complaints of annoying calls from persons in the state of Washington who had been called by this firm caused NARAL to terminate its contract. Kiley gave me the name and address of the firm: Facter Fox & Associates, 11255 W. Olympic Blvd., Los Angeles, CA 90064 (310-473-7777). He called the firm while I was in his office and spoke to Sheba Lux, a supervisor. Sheba verified that the company had a card for me and that I should have been called the night I said I was called. Their employee who called me had made no notation on the card and they had no way of identifying him.

Kiley said that NARAL had not purged the list of names sent to Facter Fox against the Direct Marketing Association Telephone Preference List, and that Facter Fox had not done so, either. I told him my name had been on file at the Direct Marketing Association for more than 6 months and that the only reason I had spoken to "Andy" was to attempt to get my name removed from NARAL's list, since I did not know he was a telemarketer. Kiley said that the telemarketers weren't allowed to use pseudonyms, and Lux confirmed this to Kiley. Kiley said that he thought Facter Fox had not supervised its employees well, and that NARAL could not afford the ill will that might result from offensive calls placed in its name.

July 28, 4 p.m. Called the Rockville Police Department. The dispatcher said that they would only take reports of harassing phone calls in person and offered to send an officer. I expressed concern about the cost to the taxpayers, but, since I wanted to file a police report, asked that an officer be sent to my home.

July 28, 4:40 p.m. Received phone message from Facter Fox (Sheba Lux) confirming they have no record of "Andy" and stating that they were trying to track him down. Said I might have to file a police report.

July 28, 7:30 p.m. Officer George Day, Rockville Police, came to my house. When he heard my report, he said that he could not take a police report since the offense had occurred in another jurisdiction. He seemed surprised that the telephone company had suggested I call him. He confirmed that harassing calls were a federal misdemeanor.

~~August~~ ^{July} 29. Wrote to Facter Fox, offering to file a complaint if necessary.

July 30, 6:30 p.m. Called AT&T Customer Service with the news that (a) neither my local police nor local phone company would help me, and (b) I now had evidence of multiple people being harassed by the same company and

possibly by the same person. Betty sounded annoyed but did give me the numbers of the California and Maryland local telephone annoying calls bureaus. When I pressed her on AT&T's responsibility, she said she'd "connect me with [her] specialist." After 2 minutes on hold, I spoke briefly to Mr. Alexander. While speaking to him, the receiver on the pay telephone I was using mysteriously went dead.

I called Mr. Alexander back. After another 3 minute wait, I was connected to him. He said that I would need to complain to the Federal Communications Commission (2025 M Street, NW, Room 6206, Washington, DC 20554). I asked him if there was a number to call and he said "no", just write them a letter. He said he'd "file an inquiry through our network" but that the phone company has no responsibility for customer misuse of its facilities.

After nearly a month, the telephone company finally gave me the name of an agency that actually has authority in these matters. This after impeding my efforts to determine where the calls had come from so that perhaps I could have identified the caller.

August 3, 4:55 p.m. Called Pacific Telephone (213-339-0795). Talked to a young man who told me that the telephone from which the second call had been placed was now disconnected, but that it had been a pay telephone in the Beverly Hobart Plaza (Shopping Center). He advised me to report the behavior of Factor Fox to the Better Business Bureau (213-251-9696). He said that Factor Fox was in the service area of GTE, not Pacific Telephone, so that he could do nothing. He did say I could also report the matter to the West Los Angeles Sheriff's Department, which (he said) had jurisdiction.

August 6, 1 p.m. Called GTE (800-482-7709), Miss O'Gorman. She insisted that I contact my local telephone company security department. "We can only take action if it's our customer." I explained I'd already talked to my local telephone company's annoying calls bureau. She gave me the number of GTE's security department after I insisted on speaking to a supervisor (805-372-8431).

August 6, 1:30 p.m. Walked to the Federal Communications Commission office. Received information on filing an "informal complaint" with that agency (ICB-FS-COMPLAINTS). Contrary to AT&T's statement, the office does receive telephone inquiries, according to its published materials, at 202-632-7553.